

## GENERAL PROVISIONS

1. DEFINITIONS (JUN 2001) - As used throughout this contract, the following terms and abbreviations have the meanings set forth below:

- a. The term "contract" means this agreement or order and any modifications hereto.
- b. The abbreviation "NAFI" means Nonappropriated Fund Instrumentality of the United States Government.
- c. The term "Contracting Officer" means the person executing or responsible for administering this contract on behalf of the NAFI, which is a party hereto, or their successor or successors.
- d. The term "Contractor" means the party responsible for providing supplies and/or services at a certain price or rate to the NAFI under this contract.
- e. The abbreviation "FAR" means Federal Acquisition Regulation.

2. DISPUTES (JUN 2001)

a. Except as otherwise provided in this contract, any dispute or claim concerning this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall state his decision in writing and mail or otherwise furnish a copy of it to the Contractor. Within 30 days from the date of receipt of such copy, the Contractor may appeal by mailing or otherwise furnishing to the Contracting Officer a written appeal addressed to the Armed Services Board of Contract Appeals, and the decision of the Board shall be final and conclusive; provided that if no such appeal is filed, the decision of the Contracting Officer shall be final and conclusive. The Contractor shall be afforded an opportunity to be heard and to offer evidence in support of any appeal under this clause. Pending final decision on such a dispute, however, the Contractor shall proceed diligently with the performance of the contract and in accordance with the decision of the Contracting Officer unless directed to do otherwise by the Contracting Officer.

b. This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph "a" above, provided, that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

3. LAW GOVERNING CONTRACTS (JUN 2001) - In any dispute arising out of this contract, the decision of which requires consideration of law questions, the rights and obligations of the parties shall be interpreted and determined in accordance with the substantive laws of the United States of America.

4. LEGAL STATUS (JUN 2001) - The NAFI is an integral part of the Department of Defense and is an instrumentality of the United States Government. Therefore, NAFI contracts are United States Government contracts; however, they do not obligate appropriated funds of the United States.

5. EXAMINATION OF RECORDS (JUN 2001)

This clause is applicable under contracts that are entered into by means of negotiation and where price and costing data are required to support a determination of price reasonableness. This clause does not apply to commercial items or when the Contracting Officer determines that prices agreed upon are based on adequate price competition. The Contractor agrees that the Contracting Officer or his duly authorized representative shall have the right to examine and audit the books and records of the Contractor directly pertaining to the contract during the period of the contract and until the expiration of three years after the final payment.

6. ASSIGNMENT (JUN 2001) - The Contractor or its assignee's rights to be paid amounts due as a result of performance of this contract, may be assigned. No assignment by the Contractor, assigning its rights or delegating its obligations under this contract will be effective and binding on the NAFI until the written terms of the assignment have been approved in writing by the Contracting Officer.

7. GRATUITIES (JUN 2001)

a. The NAFI may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found, after notice and hearing, by the Secretary of the Air Force or their duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent, or representative of the Contractor, to any officer or employees of the

Government or the NAFI with a view toward securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract.

b. In the event this contract is terminated as provided in paragraph "a" hereof, the NAFI shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of contract by the Contractor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the Air Force or their duly authorized representative) which shall be not less than three nor more than ten times the cost incurred by the Contractor in providing any such gratuities to any such officer or employee.

c. The rights and remedies of the NAFI provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

8. TERMINATION FOR CONVENIENCE (JUN 2001) - The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the NAFI. If this contract is for supplies and is so terminated, the Contractor shall be compensated in accordance with FAR, Sub Parts 49.1 and 49.2 in effect on this contract's date. To the extent that this contract is for services and is so terminated, the NAFI shall be liable only for payment in accordance with the payment provisions of this contract for services rendered prior to the effective date of termination, providing there are no Contractor claims covering nonrecurring costs for capital investment. If there are any such Contractor claims, they shall be settled in accordance with FAR, Sub Parts 49.1 and 49.2.

9. CANCELLATION BY MUTUAL AGREEMENT (JUN 2001) - Should the situation warrant, the parties upon mutual agreement and no costs, may cancel this contract.

10. TERMINATION FOR CAUSE (JUN 2001)

a. (1) The NAFI may, subject to paragraphs (c) and (d) below, by written notice of cause to the Contractor, terminate this contract in whole or in part if the Contractor fails to-

(i) Deliver the supplies or perform the service within the time specified within this contract or any Extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The NAFI's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of notice from the Contracting Officer specifying the failure.

b. If the NAFI terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will remain liable to the NAFI for any excess costs for those supplies or services. However the Contractor must continue the work not terminated.

c. The Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) act of the NAFI in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and; (9) unusually severe weather. Defaults by subcontractors at any tier for any reason do not constitute causes beyond the control and without the fault or negligence of the Contractor.

d. If this contract is terminated for cause, the NAFI may require the Contractor to transfer title and deliver to the NAFI as directed by the Contracting Officer, any

(1) completed supplies, and

(2) partially completed supplies and materials, parts, tool dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as manufacturing materials in the clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the NAFI has an interest.

e. The NAFI shall pay the contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials

delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes Clause. The NAFI may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the NAFI against loss because of outstanding liens or claims of former lien holders.

f. If, after termination, it is determined that the cause by the Contractor was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for convenience of the NAFI.

g. The rights and remedies of the NAFI in this clause are in addition to any other rights and remedies provided by law or under this contract.

11. INSPECTION AND ACCEPTANCE (JUN 2001) - Inspection and acceptance will be at destination, unless otherwise provided in this contract. Notwithstanding the requirements for any NAFI inspection and test contained in specifications applicable to this contract, except where specialized inspections or tests are specified for performance solely by the NAFI, the Contractor, shall perform or have performed the inspections and tests required to substantiate that the supplies provided under the contract conform to the drawings, specifications, and contract requirements listed herein, including if applicable the technical requirements for the manufacturers' part numbers specified herein. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. Acceptance of the supplies or services or a written notice of rejections must be accomplished on or before the fifth working day following delivery of the supplies or services, unless otherwise specified in this contract.

12. VARIATION IN QUANTITY (JUN 2001) - No variation in quantity of any item called for by this contract will be accepted unless authorized by the Contracting Officer.

13. PARTIAL DELIVERIES (JUN 2001) - Partial deliveries are not permitted unless authorized by the terms of the contract or approved by the Contracting Officer.

14. PAYMENTS (JUN 2001) - Partial payments will be made when deliveries are authorized or as approved by the Contracting Officer. Payments and penalties for late payments are subject to the requirements established by the Prompt Payment Act, as amended, and as implemented for NAFI's. If the NAFI makes payment but such payment fails to include a prompt payment penalty due to the Contractor within 10 days from when the contract payment is made, penalty amounts will not be paid unless the Contractor makes a written request within forty days after the date of payment.

15. HOLD AND SAVE HARMLESS (JUN 2001) - The Contractor shall indemnify, hold and save harmless, and defend the NAFI, its outlets and customers from any liability, claimed or established for violation or infringement of any patent, copyright, or trademark right asserted by any third party with respect to goods hereby ordered or any part thereof. Contractor further agrees to hold the NAFI harmless from all claims or judgments for damages resulting from the use of products or services listed in this contract, except for such claims or damages caused by, or resulting from negligence of NAFI customers, employees, agents, or representatives. Also, Contractor shall at all times hold and save harmless the NAFI, its agents, representatives, and employees from any and all suits, claims, charges, and expenses which arise out of acts or omissions of Contractor, its agents, representatives, or employees.

16. MODIFICATIONS (JUN 2001) - No agreement or understanding to modify this contract will be binding upon the NAFI unless made in writing and signed by a Contracting Officer from the office that issued the contract or its successor.

17. TAXES (JUN 2001)

a. Except as may be otherwise provided in this contract, the contract price includes all taxes, duties or other public charges in effect and applicable to this contract on the contract date, except any tax, duty, or other public charge, which by law, regulation or governmental agreement, is not applicable to expenditures

made by the NAFI or on its behalf; or any tax, duty, or other public charge from which the Contractor, or any subcontractor hereunder, is exempt by law, regulation or otherwise. If any such tax, duty, or other public charge has been included in the contract price, through error or otherwise, the contract price shall be correspondingly reduced.

b. If for any reason, after the contract date of execution, the Contractor or subcontractor is relieved in whole or in part from the payment or the burden of any tax, duty, or other public charge included in the contract price, the contract price shall be correspondingly reduced; or if the Contractor or subcontractor is required to pay in whole or in part any tax, duty, or other public charge which was not applicable at the contract date of execution the contract price shall be correspondingly increased.

**18. PROOF OF SHIPMENT (JUN 2001) - (Applicable to shipments outside the United States through the Defense Transportation System [DTS] and Parcel Post shipments to overseas destinations.)**

a. Notwithstanding any clause of this contract to the contrary, payment will be made for items not yet received, upon receipt of an invoice accompanied by an appropriate proof of shipment. If shipment is made by insured parcel post, the contractor must furnish a copy of the Insured Mail Receipt issued by the US Postal Service. Otherwise, a stamped copy of a Certificate of Mailing issued by the US Postal Service must be furnished. If shipment is made by a common carrier (rail, air or motor freight), the Contractor must furnish a signed copy of the shipping document on which items are receipted for by the common carrier. A signed receipt by a NAFI representative at the delivery point (CCP or POE) is also acceptable evidence of proof of shipment.

b. Forwarding a proof of shipment and an invoice for payment by the Contractor shall be construed as a certification by the contractor that the items shipped conform to the specifications.

c. Notwithstanding any provisions of this clause or any payment made pursuant to the terms of this clause prior to receipt of the items contracted for, the NAFI retains the right to inspect upon receipt and the right to reject nonconforming items. The liability of the Contractor with respect to items for which payments have been made will, after inspection by the NAFI or after the expiration of a reasonable time following delivery to the NAFI within which inspection may be made, whichever occurs first, be limited to (i) exceptions taken at the time of inspection, and (ii) latent defects, fraud, or such gross mistakes as amount to fraud.

**19. COMMERCIAL WARRANTY (JUN 2001) - The Contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies or services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the NAFI by any other clause of this contract. The printed terms and conditions of such warranty will be provided to the NAFI with the delivery of any supplies covered.**

**20. ADVERTISEMENTS (JUN 2001) - Contractor agrees that none of its nor its agent's advertisements, to include publications, merchandise, promotions, coupons, sweepstakes, contest, sales brochures, etc, shall state, infer or imply that the Contractor's products or services are approved, promoted, or endorsed by the NAFI. Any advertisement, including cents-off coupons, which refers to a NAFI will contain a statement that the advertisement is neither paid for, nor sponsored in whole or in part by, the particular activity.**

**21. DISCOUNTS FOR PROMPT PAYMENT (JUN 2001)**

a. Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

b. In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the agency annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or

legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

**22. INVOICES (JUN 2001):**

a. An invoice is a written request for payment under the contract for supplies delivered or for services rendered. In order to be proper, an invoice should include (and in order to support the payment of interest penalties, must include) the following:

- (i) Invoice date;
- (ii) Name of Contractor;
- (iii) Contract number (including order number, if any), contract line item number, contract description of supplies or services, quantity, contract unit of measure and unit price, and extended total;
- (iv) Shipment number and date of shipment (Bill of Lading number and weight of shipment will be shown for shipments on Government Bills of Lading)
- (v) Name and address to which payment is to be sent (which must be the same as that in the contract or on a proper notice of assignment);
- (vi) Name (where practicable), title, phone number and mailing address of person to be notified in event of a defective invoice; and
- (vii) Any other information or documentation required by other provisions of the contract (such as evidence of shipment). Invoices shall be prepared and submitted in duplicate (one copy shall be marked "Original") unless otherwise specified.

b. For purposes of determining if interest begins to accrue under the PROMPT PAYMENT ACT (PUBLIC LAW 97-177):

- (i) A proper invoice will be deemed to have been received when it is received by the office designated in the contract for receipt of invoices and acceptance of the supplies delivered or services rendered has occurred.
- (ii) Payment shall be considered made on the date on which a check for such payment is dated.
- (iii) Payment terms (e.g., "Net 20") offered by the contractor will not be deemed Required payment dates.
- (iv) The following periods of time will not be included:
  - (A) After receipt of improper invoice and prior to notice of any defect or impropriety, but not to exceed three days for meat and meat food products, five days for perishable agricultural commodities, and 15 days in all other cases, and
  - (B) Between the date of a notice of any defect or impropriety and the date a proper invoice is received. When the notice is in writing, it shall be considered made on the date shown on the notice.

**23. ELECTRONIC FUND TRANSFER PAYMENTS (JUN 2001)** – Federal law requires Federal payments to be made by electronic fund transfer. Any payment made on this contract has to be made by EFT (unless otherwise specified within the contract or exempted by law). After award of the contract the EFT Partner Enrollment Form will be provided and must be completed to accomplish EFT payments.

**24. NOTIFICATION OF DEBARMENT/SUSPENSION STATUS (JUN 2001)** - The Contractor shall provide immediate notice to the Contracting Officer in the event of being suspended, debarred or declared ineligible by any other Federal Department or agency, or upon receipt of a notice of proposed debarment from another DOD Agency, during the performance of this contract.

**25. NON WAIVER OF DEFAULTS (JUN 2001)** - Any failure by the NAFI at any time, or from time to time, to enforce or require strict performance of any terms or conditions of this contract will not constitute waiver thereof and will not affect or impair such terms or conditions in any way or the NAFI's right at any time to avail itself of such remedies as it may have for any breach or breaches of such terms and conditions.

## **LIST OF FAR CLAUSES INCORPORATED BY REFERENCE**

The provisions of the following clauses set forth in the Federal Acquisition Regulation (FAR) or DoD FAR Supplement are hereby incorporated into this order or contract by reference with the same force and effect as though herein set forth in full. As used in the following clauses, the term "Government" is deleted and the abbreviation "NAFI" is substituted in lieu thereof. The date of each clause shall be the current date set forth in FAR or DoD FAR Supplement on the issuance date of this order or contract. Clauses made inapplicable by the reference or by the kind of order, contract (e.g., orders or contract for services instead of supplies) or dollar amount are self-deleting. The complete text of any clause incorporated in this order or contract by reference may be obtained from the contracting officer.

<b>CLAUSE NO.</b>	<b>REFERENCE</b>	<b>CLAUSE TITLE</b>
26	52.243-1	Changes - Fixed-Price
27	52.222-13	Compliance with Davis-Bacon and related Act Regulations
28	52.222-41	Service Contract Act of 1965, as Amended
29	52.225-11	Buy American Act-Balance of Payments Program-Construction Materials under Trade Agreements
30	52.222-4	Contract Work Hours and Safety Standards Act-Overtime Compensation
31	52.246-16	Responsibility for Supplies
32	52.222-20	Walsh-Healy Public Contracts Act
33	52.222-26	Equal Opportunity
34	252.225-7001	Buy American Act and Balance of Payments Program
35	52.222-3	Convict Labor
36	252.225-7002	Qualifying Country Sources as Subcontractors
37	252.203-7001	Prohibition on Persons Convicted of Fraud or Other Defense-Contract Felonies
38	52.222-21	Prohibition of Segregated Facilities